

Agency 118

State Historical Society

Articles

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Article 1.—KANSAS STATE HISTORICAL SOCIETY DEACCESSIONING ACT

118-1-1. Removal of property from the collection holdings of the state historical society. (a) Disposition of certain holdings in the state archives that is regulated by K.S.A. 75-3501 et seq., and K.S.A. 45-401 et seq., and amendments thereto, shall not be subject to these regulations.

(b) The disposition of unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined in 43 CFR Part 10, as amended on January 13, 1997, shall not be subject to these regulations.

(c) Definitions.

(1) "Collection holdings or properties" means historical materials, including architectural drawings, artworks, artifacts, audiovisual materials, books, computer tapes or discs, governmental records, manuscripts, maps, newspapers, pamphlets, periodicals, photographs, and other tangible objects held for public use by the state historical society as the trustee of the state.

(2) "Deaccession" means to formally remove property from the state historical society collection holdings by following established professional procedures.

(3) "Deed of gift or accession record" means the legal document describing the property and transferring the title for that property to the state historical society.

(4) "Disposition" means the transfer or termination of title to and physical custody of property removed from the state historical society collection holdings.

(5) "Documentation" means recorded information held by the society pertaining to the prop-

erty, including its history, condition, changes in ownership or custody, use in research or education, and disposition.

(6) "Donation" means the surrender of physical possession and title to property for which no compensation, monetary or otherwise, is received.

(7) "Historical material" means tangible property that has historical or scientific value or significance to researchers or the general public.

(8) "Professional procedures" means those procedures utilized by the state historical society staff based on professional training and experience that are considered ethical, legal, and responsible and that are generally accepted by other professionals in that field. (Authorized by and implementing K.S.A. 75-2701; effective Aug. 24, 1992; amended Oct. 23, 1998.)

118-1-2. Review committee. A committee shall review the property being considered for removal from the collection holdings of the society. This committee shall be known as the deaccession review committee.

(a) The deaccession review committee shall consist of the following professionals who are not society staff members:

- (1) One archivist;
- (2) one historian;
- (3) one archeologist;
- (4) one museum professional;
- (5) one librarian; and
- (6) one genealogist.

(b) The deaccession review committee shall also include the executive director of the society and the assistant executive director of the society.

(1) The executive director of the society or the executive director's designee shall function as chairperson of the deaccession review committee.

(2) The assistant executive director of the society shall function as secretary to the committee.

(c) Each deaccession review committee member shall be appointed to a renewable two-year term. Appointments to the deaccession review committee shall be made by the executive director of the society.

(d) The deaccession review committee shall meet upon call of the chairperson. (Authorized by and implementing K.S.A. 75-2701; effective Aug. 24, 1992; amended Oct. 23, 1998.)

118-1-3. Types of property. Property to be considered for removal from the society's collection holdings shall be defined as follows.

(a) "Duplicate properties" means two or more tangible objects of the collection holdings that are identical or nearly identical in physical characteristics or informational content and that are deemed by established professional standards and institutional needs and programs to be of limited value or use due to that duplication.

(b) "Property outside of the society's scope of collections" means any property that does not fall into subject areas for research, reference, and other educational purposes as outlined by K.S.A. 75-2701, K.S.A. 75-2702, K.S.A. 75-2703, K.S.A. 75-2704, and amendments thereto, and the mission statement adopted by the state historical society.

(c) "Property with insufficient research, educational, or exhibit value" means property that meets either of the following criteria:

(1) Lacks sufficient background information to be of use; or

(2) (A) through accident, vandalism, natural disaster, or deterioration because of age, environment, or inherent vice, has become embrittled, discolored, or misshapen beyond being useful for research, reference, or other educational purposes;

(B) cannot be repaired or conserved through reasonable expenditures of time, materials, and money; and

(C) is considered to be damaged or deteriorated property.

(d) "Hazardous property" means property composed of or containing materials that by nature or through the process of deterioration present an environmental or health hazard to state historical society patrons, visitors, staff, volunteers, physical plant, or collection holdings. (Au-

thorized by and implementing K.S.A. 75-2701; effective Aug. 24, 1992; amended Oct. 23, 1998.)

118-1-4. Procedures for removal of property from the society collection holdings.

The manner of disposition of property from society collections holdings shall be in the best interests of the state historical society and the public that it serves and represents in owning the property. Property to be considered for removal from collection holdings shall undergo the following procedures.

(a) (1) Documentation relating to the property being considered for removal shall be assembled by the society staff member responsible for the property. This documentation may include deeds of gift or accession records, contracts, photographs, signed authorizations, correspondence, or advertisements.

(2) Clear title to the property shall be established by the staff member responsible for the property, subject to the provisions of K.S.A. 58-4001 through 58-4013, and amendments thereto. For manuscript materials and images of artworks, this may apply to the tangible property rights only.

(3) Property for which the donor has taken a charitable donation tax deduction shall not be removed by the society from collection holdings except in accordance with federal tax law and regulations, unless the property presents a clear and present hazard to society staff, patrons, visitors, volunteers, collection holdings, or physical plant.

(4) In the course of normal processing of collections, duplicates and extraneous materials may be removed and shall be exempt from deaccessioning procedures.

(b) When property that has been donated by an individual is being considered for removal from the society's collection holdings within 20 years of the donation, reasonable effort shall be made to notify the donor or the donor's immediate family of this decision.

(1) A letter offering to return this property to the donor shall be sent to the last known address of the donor.

(2) If the letter is returned and no forwarding address is available, and the identity and addresses of immediate family members, spouse or children are unknown to society staff, then deaccessioning of the property shall be undertaken by the society. If one or more family members are identified, the notification shall be sent to each of them.

(c) If historical materials have been micro-

graphically or electronically recorded and meet the following criteria, then the original materials shall be considered duplicate properties and may be considered for removal from the collection holdings.

(1) The micrographic form shall have two copies: one security negative and one copy negative or positive. Electronically recorded copies shall be made according to established standards. The security negative may remain in the possession of an outside vendor who has performed the micrographic reproduction and retains the security negative.

(2) Before removal of the original historical materials from the collection holdings, a properly trained person shall inspect the micrographic copies to determine that they are satisfactory substitutes for the originals. This shall include refilming or appropriate treatment for redox and other forms of deterioration.

(3) The security copies shall be periodically inspected for deterioration, and that deterioration shall be controlled.

(d) The internal committees for collection review shall review the property being considered for removal from the collection holdings of that division. A list of property agreed upon for removal shall be forwarded to the society's assistant executive director.

(e) The deaccession review committee shall review the property being recommended for removal from the collection holdings. Duplicate properties shall be exempt from deaccession review committee review, but duplicate properties that are deaccessioned shall be disposed of in accordance with the procedures described in 118-1-4(f).

(1) A list of property, including appropriate documentation and rationalization for removal of the property from the collection holdings, being considered for removal from the society's collection holdings shall be provided by the society's assistant executive director to the deaccession review committee members. Public notice of the availability of that list for public review shall also be provided by the society's assistant executive director. The deaccession review committee shall also receive a mail ballot to be returned to the society's assistant executive director within 30 days of receipt. For each item on the list, there shall be two choices: deaccession review committee members may either authorize the item for deaccession or defer the item for discussion at a

meeting of the deaccession review committee. A unanimous vote by mail ballot returned by the due date shall be required to authorize property for deaccession from the society's collection holdings.

(2) If the mail ballot is not unanimous, a meeting of the deaccession review committee shall be called by the society's assistant executive director. Five members shall constitute a quorum. The deaccession review committee shall reach a two-thirds majority agreement of members present before property may be removed from the society's collection holdings. If a two-thirds majority agreement cannot be reached to remove property, the property shall be retained in the society's collection holdings.

(f) Property determined by the deaccession review committee to be appropriate for removal from the society's collection holdings shall be disposed of by one of the following methods. Preference shall be for the property to remain in public ownership or domain.

(1) Hazardous property shall be disposed of according to existing state and federal laws or guidelines from appropriate state and federal regulatory agencies.

(2) Kansas newspapers shall be offered to historical or genealogical societies, or both, or other appropriate institutions of the county or area in which the newspaper was originally published. If competing entities are requesting newspapers and the matter cannot be resolved locally, the deaccession review committee shall make the final decision.

(3) When possible, property may be traded to a public or private institution or individual for property that the society wishes to obtain.

(4) Property may be offered for donation or sale to Kansas libraries, museums, archives, historical and genealogical societies, educational institutions, and other not-for-profit repositories for historical materials, public or private. Notification of the availability of deaccessioned materials shall be provided by first-class mail to local institutions within Kansas when these materials have local research, educational, or exhibit value. Appropriate institutions shall be selected by staff for notification from the membership directory of the Kansas museums association or the directory of historical and genealogical societies in Kansas published by the Kansas state historical society.

(5) When appropriate, property may be offered for donation or sale to out-of-state libraries, museums, archives, historical and genealogical so-

cieties, educational institutions, and other not-for-profit repositories for historical materials, public or private.

(6) Property may be sold to the general public.

(7) Property not disposed of by trade, donation, or sale may be destroyed by burning, shredding, recycling, depositing in a landfill, or by other methods.

(8) Documentation relating to the property removed from the collection holdings shall be amended to include the date and method of disposition. The documentation shall be accessible upon request during the society's regular business hours. Some donor information may be restricted as provided for in K.S.A. 45-221, paragraph (a)(8), and amendments thereto.

(9) Property offered for sale to the general public shall not be purchased by society employees or officers or deaccession review committee members. (Authorized by and implementing K.S.A. 75-2701; effective Aug. 24, 1992; amended Oct. 23, 1998.)

**Article 2.—REMOVAL OF HUMAN
REMAINS AND ASSOCIATED BURIAL
GOODS FROM THE KANSAS
STATE HISTORICAL SOCIETY
COLLECTIONS ACT**

118-2-1. Removal of human skeletal remains from the collection holdings of the state historical society. (a) As used in this rule and regulation:

(1) "Property," as defined in K.S.A. 1991 Supp. 75-2701, shall not include human skeletal remains and associated burial goods.

(2) Human skeletal remains and associated burial goods shall be disposed of according to the provisions of K.S.A. 75-2741 through 75-2754.

(3) Nothing in this regulation shall be read to exempt these human remains and associated burial goods from the provisions of or procedures set forth in K.S.A. 75-2748(b). (Authorized by and implementing K.S.A. 1991 Supp. 75-2701; effective June 1, 1992.)

**Article 3.—REVIEW OF PROJECTS
AFFECTING HISTORIC PROPERTIES
AND THEIR ENVIRONS**

118-3-1. Definitions. For the purposes of Article 3, these terms shall have the following meanings.

(a) "Boundaries of a historic property" means

the limits or extent of a geographic area included in the state or national registers of historic places.

(b) "Character-defining features" means those physical characteristics and elements that indicate the integrity, design, and materials of the listed historic property.

(c) "Demolition" means the partial or complete removal of a building or structure, the components of a building or structure, or the man-made components of the site on which the building or structure is located, including walks, driveways, retaining walls, and fences.

(d) "Environs" means the historic property's associated surroundings and the elements or conditions that serve to characterize a specific place, neighborhood, district, or area, which takes into account all relevant factors, including the following:

- (1) The use of the area;
- (2) the significance of the historical property;
- (3) the scope of the project;
- (4) surrounding buildings, structures, and foliage; and
- (5) the topography of the surrounding area.

A project need not be adjacent to a historic property for it to be in the historic property's environs.

(e) "Feasible and prudent alternative" means an alternative solution that can be reasonably accomplished and that is sensible or realistic. Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include the following:

- (1) Technical issues;
- (2) design issues;
- (3) the project's relationship to the community-wide plan, if any; and
- (4) economic issues.

(f) "Governmental entity" means the "state or any political subdivision of the state," as that term is defined by K.S.A. 75-2714, and amendments thereto.

(g) "Ground-disturbing project" means a project that changes the existing grade, shape, or contour of a property or involves drilling into or excavation of earth from a piece of property where there is the potential to disturb archeological remains.

(h) "Historic property" means any property included on "the national register of historic places" or "the register of historic Kansas places."

(i) "Program includes all possible planning" means that the written evidence and materials submitted by a governmental entity to the state

historic preservation officer clearly identify all alternative solutions that have been investigated, compare the differences among the alternative solutions and their effects, and describe mitigation measures proposed by the project proponent that address an adverse effect determination of the state historic preservation officer.

(j) "Relevant factors" means pertinent information submitted by project proponents or project opponents in written form, including evidence supporting their positions. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-2. Notice of projects directly undertaken by a governmental entity or supported by a governmental entity. (a) Projects undertaken directly by a governmental entity or projects undertaken by a person but supported by a governmental entity, for which notice shall be given when required by K.S.A. 75-2724(a), and amendments thereto, shall include any of the following:

(1) Exterior or interior projects involving the listed historic property, including any of the following:

- (A) Construction of one or more structures;
- (B) site improvements;
- (C) repair work;
- (D) alterations or additions to the listed historic property;

(E) partial or total demolition of any structure on the listed historic property; or

(F) ground-disturbing projects;

(2) projects carried out within the environs of a listed historic property, including the following:

(A) Construction or alteration of any existing structures;

(B) demolition or removal of structures;

(C) public improvements, including improvements to streets, curbs, sidewalks, parking areas, parks, and other public amenities;

(D) vacation of streets, alleys, or both; or

(E) ground-disturbing projects; or

(3) any other project that is determined by the state historic preservation officer to have the potential to encroach upon, damage, or destroy a listed historic property or its environs.

(b) Projects involving emergency repair work. Each governmental entity shall give notice of emergency work, including water or sewer line repair or protective work required immediately for

structures damaged by fire, tornado, or other disaster, if the project would be covered by subsection (a) of this regulation. A review of the emergency repair work shall be expedited by the state historic preservation officer and shall be handled by telephone or FAX when possible. If, after reasonable but unsuccessful efforts to notify the state historic preservation officer, emergency repair work must be completed, the work shall be performed in a manner that minimizes the effect on the historic property or its environs. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-3. Notice of projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use to any person by a governmental entity. (a) Projects for which a governmental entity issues a lease, permit, license, certificate, or other entitlement for use to any person for which notice shall be given when required by K.S.A. 75-2724(a), and amendments thereto, shall include the following:

(1) Projects directly or indirectly affecting any listed historic building, structure, object, district, or site, including any of the following:

(A) Exterior or interior projects involving the listed historic property, including any of the following:

- (i) Construction of one or more structures;
- (ii) site improvements;
- (iii) repair work;
- (iv) alterations or additions to the listed historic property, including signage;

(v) partial or total demolition of any structure on the listed historic property; or

(vi) ground-disturbing projects; or

(B) rezoning;

(C) special use or conditional use permits;

(D) subdivision of property; or

(E) vacation of streets or alleys; and

(2) projects requiring permits that would affect the environs of a listed historic property, including any of the following:

(A) Rezoning;

(B) special use or conditional use permits;

(C) subdivision of property;

(D) vacation of streets or alleys; or

(E) exterior projects that affect any building, structure, object, or site in the environs of a historic property, including any of the following:

(i) Construction of one or more structures;

- (ii) site improvements;
- (iii) repair work;
- (iv) alterations or additions to structures in the environs, including signage; or
- (v) partial or total demolition of a structure.

(b) Exceptions. Notice shall not be required when the issued lease, permit, license, certificate, or other entitlement is for interior projects in the environs of a listed property. In addition, notice shall not be required for any exterior projects in the environs of a listed property for replacement of deteriorated existing materials with new, matching materials, known as replacement-in-kind. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-4. Content of notice to state historic preservation officer. Each governmental entity required to give notice to the state historic preservation officer under K.S.A. 75-2724, and amendments thereto, and K.A.R. 118-3-2 and K.A.R. 118-3-3, shall provide notice in accordance with this regulation before undertaking a project.

(a) At a minimum, the following documentation shall be submitted with the initial notification for all projects:

(1) A written transmittal or letter that contains the following elements from the governmental entity:

(A) A request for the state historic preservation officer's comments on the proposed project in accordance with K.S.A. 75-2724, and amendments thereto; and

(B) an identification of the work to be done, the property address, its legal description, and the project contact person;

(2) complete architectural drawings as required by the governmental entity for issuance of a building permit, or sufficient documentation to clearly explain the proposed project, including floor plans, elevations, wall or building sections and detail drawings, as applicable. For additions or new construction, the property owner shall also furnish a site plan showing all existing structures and the location of the proposed new construction. If no documentation is required by the city or county, the property owner shall supply to the state historic preservation officer sufficient documentation to clearly explain the proposed project.

(b) If a project is reviewed to assess its effects on one or more listed historic properties, the documentation shall include photographs accurately

and fully depicting the site and setting of the historic structure, including the following perspectives:

- (1) A general overall view from the street;
- (2) the relevant exterior elevations;
- (3) detailed close-ups of the specific exterior or interior architectural features, including windows, doors, porches, and stairs; and
- (4) the interior views of rooms that will be affected by the proposed project.

(c) If a project is reviewed to assess its effects on the environs of one or more listed historic properties, the documentation shall include a vicinity map showing the proximity of the proposed project to the listed historic property, existing structures in the environs, and clear, sharp photographs that fully depict the project and the listed property's environs, including the following:

- (1) Views from the proposed project to the historic property;
- (2) views from the historic property to the proposed project;
- (3) views that show the conditions and character of the environs; and
- (4) the relevant exterior elevations.

(d) The governmental entity shall provide in writing all revisions, amendments, or clarifications to previously submitted project documents.

(e) Any of these requirements to submit documentation may be waived by the state historic preservation officer if adequate and recent information is already in the state historic preservation officer's files to complete the review. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-5. Notice of revisions or modifications. After the state historic preservation officer has initiated an investigation of a project, the governmental entity providing notice shall keep the state historic preservation officer informed of any revisions or modifications to the project by forwarding any changes to the proposed project submitted by the project proponent within five working days of receiving them from the project proponent. The governmental entity shall forward the documentation described in K.A.R. 118-3-4 with this notice. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-6. Notice required before project

may proceed. If the state historic preservation officer determines that a project will encroach upon, damage, or destroy a listed historic property or its environs and if the appropriate governmental entity subsequently makes the findings required under K.S.A. 75-2724, and amendments thereto, to permit a project to proceed, the governmental entity shall notify the state historic preservation officer of the determination by certified mail. The governmental entity shall not issue any permit or authorize the project to begin for five working days after it gives notice of its determination. This notice shall include the following:

(a) A written transmittal or letter from the appropriate governmental entity informing the state historic preservation officer of the findings made by the governmental entity;

(b) a written copy of the minutes of the meeting where the project was discussed; and

(c) a copy of all relevant written information upon which the appropriate unit of government based its decision. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-7. Investigations without notice.

If the state historic preservation officer initiates an investigation of a project that may encroach upon, damage, or destroy the environs of a historic property but for which no notice is required from a governmental entity, notice of the investigation shall be given by the state historic preservation officer to the governmental entity. The investigation shall then proceed as if it were a project for which the governmental entity is obligated to provide notice, and the governmental entity shall provide documentation to the state historic preservation officer. A determination shall be made accordingly by the state historic preservation officer. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-8. Standards and guidelines utilized by the state historic preservation officer. The following standards and guidelines shall be used by the state historic preservation officer when reviewing projects.

(a) "The secretary of the interior's standards for the treatment of historic properties with guidelines for preserving, rehabilitating, restoring & reconstructing historic buildings," 1995 edition,

is adopted by reference as a guide to determine whether or not proposed projects encroach upon, damage, or destroy listed historic properties.

(b) The "treatment of archeological properties: a handbook," endorsed by the advisory council on historic preservation, Washington, D.C., on November 5, 1980, is adopted by reference as a guide for identifying and evaluating archeological sites using the criteria of eligibility for listing sites on the national register of historic places.

(c) The Kansas state historical society's "standards and guidelines for evaluating the effect of projects on environs," 1998 edition, is adopted by reference as a guide to determine whether or not proposed projects encroach upon, damage, or destroy the environs of listed historic properties. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-9. Official response. An official response shall be provided by the state historic preservation officer within 30 days of receiving notice of a project. Official responses that may be issued by the state historic preservation officer may include any of the following.

(a) The state historic preservation officer is initiating an investigation, and additional information is required.

(b) The project does not encroach upon, damage, or destroy the listed historic property or its environs.

(c) The project does encroach upon, damage, or destroy the listed historic property or its environs.

(d) No investigation will be initiated, and the 30-day waiting period is waived. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-10. Initiating an investigation. "The state historic preservation officer is initiating an investigation, and additional information is required" response may be issued when any of these conditions is met.

(a) The state historic preservation officer has determined that insufficient information was included in the submittal and additional information is necessary to complete the required review.

(b) The project is likely to encroach upon, damage, or destroy the listed historic property or its environs, and the state historic preservation officer desires to suggest alterations to the proposed

project so that the proponent can revise the proposal to meet the standards and guidelines set out in K.A.R. 118-3-8.

(c) The state historic preservation officer desires to solicit the advice and recommendations of the historic sites board of review.

(d) The state historic preservation officer directs that a public hearing or hearings be held on a proposed project. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-11. “Project does not encroach” response. A “project does not encroach upon, damage, or destroy the listed historic property or its environs” response shall be issued when the state historic preservation officer determines that the proposed project meets the standards and guidelines established in K.A.R. 118-3-8. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-12. “Project does encroach” response. (a) A “project does encroach upon, damage, or destroy the listed historic property or its environs” response shall be issued when the state historic preservation officer determines that the proposed project does not meet the standards and guidelines established in K.A.R. 118-3-8 and the project will encroach upon, damage, or destroy the listed historic property or its environs. The state historic preservation officer’s response letter shall state why the project will have an adverse effect, outline the standards and guidelines that are not met, and describe the responsibilities of the appropriate governing body under the state preservation statute.

(b)(1) A “project does encroach” response may also include “suggestions for approval.” If, in the state historic preservation officer’s opinion, the project could be revised in order to meet the standards and guidelines, suggested conditions for approval may be indicated in the response.

(2) If the project proponent incorporates the suggestions for approval in a revised proposal, the additional information shall be submitted to the state historic preservation officer and a new response shall be issued, the resolution of which shall depend on the adequacy of the revisions to the project. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-13. Executive review of project.

After a governmental entity notifies the state historic preservation officer that the governing body has complied with K.S.A. 75-2715, et seq., and amendments thereto, and has made the proper findings, the governing body’s decision shall be reviewed by the state historic preservation officer within five working days of receipt of notice. The findings of the governing body shall be reviewed by the state historic preservation officer, and determination of whether or not further action is required shall be made by this individual. Acknowledgement that the state historic preservation officer received the governing body’s findings shall be provided to the governing body. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-14. Reconsideration of official response. In response to additional information, a new official response may be issued by the state historic preservation officer. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-15. Provisions for transfer of authority. An agreement authorizing any city, county, or state educational institution under the control and supervision of the board of regents to make recommendations or to perform any or all of the review responsibilities of the state historic preservation officer, within the jurisdiction of that city, county, or state educational institution, may be entered into by the state historic preservation officer.

(a) In order to transfer authority to a city or county, a determination shall be made by the state historic preservation officer that the city or county meets each of the following conditions.

(1) It has enacted a comprehensive, local historic preservation ordinance.

(2) It has established a qualified, local historic preservation board or commission.

(3) It is actively engaged in a local historic preservation program.

(b) In order to transfer authority to a state educational institution under the control and supervision of the board of regents, a determination shall be made by the state historic preservation officer that the institution meets both of the following conditions.

(1) It has constituted a qualified, local historic preservation board or commission.

(2) It is actively engaged in a campus historic preservation program. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

118-3-16. Transfer of authority agreement. (a) Each agreement between the state historic preservation officer and a city or county shall specify the following information:

- (1) The authority delegated;
- (2) the standards for project review;
- (3) the manner in which decisions are to be reported to the state historic preservation officer;
- (4) the conditions under which assistance from the state historic preservation officer can be requested;
- (5) an appeal procedure and designation of the governing body with jurisdiction;
- (6) an amendment procedure;
- (7) the length of time the agreement is valid;
- (8) provisions for termination of the agreement; and
- (9) the state historic preservation officer's authority under K.S.A. 75-2724(e), and amendments thereto.

(b) Each agreement between the state historic preservation officer and a state educational institution under the control and supervision of the board of regents shall specify the following:

- (1) The authority delegated;
- (2) the standards for project review;
- (3) the manner in which decisions are to be reported to the state historic preservation officer;
- (4) the conditions under which assistance from the state historic preservation officer can be requested;
- (5) an appeal procedure and designation of the governing body with jurisdiction;
- (6) an amendment procedure;
- (7) the length of time the agreement is valid; and
- (8) provisions for termination of the agreement. (Authorized by K.S.A. 75-2721(b); implementing K.S.A. 75-2724; effective, T-118-5-1-98, May 1, 1998; effective Oct. 23, 1998.)

Article 4.—LAND SURVEY REFERENCE REPORTS

118-4-1. Surveys originating from public land survey corners. (a) Whenever a survey

originates from a United States public land survey corner marker or any related accessory, the land surveyor shall file a reference report, as described in K.A.R. 118-4-3, with the Kansas state historical society and with the county surveyor for the county or counties in which the survey corner exists. "Accessory" means any object positioned above, upon, or near a United States public survey corner for the purpose of facilitating locations when the actual United States public land survey marker is not accessible.

(b) If a survey originates from more than one corner, the land surveyor shall file multiple reference reports. (Authorized by K.S.A. 58-2009; implementing K.S.A. 58-2011; effective June 4, 1999.)

118-4-2. Endangered corners. (a) When it is likely that any activity will occur by which a United States public land survey corner marker or accessory will be altered, removed, or damaged, and when a person qualified to practice land surveying establishes reference points for its restoration, reestablishment, or replacement, the land surveyor shall file a reference report with the Kansas state historical society and with the county surveyor for the county or counties in which the survey corner exists. The land surveyor shall file a separate reference report for each endangered section corner marker.

(b) Upon completion of the activity, the surveyor shall file a restoration report within 30 days identifying the reference report to which it relates and indicating one of the following:

(1) That no damage or alteration has occurred; or

(2) that damage or alteration has occurred and that the corner marker has been restored. The restoration report shall set forth the applicable information required by K.A.R. 118-4-3. (Authorized by K.S.A. 58-2009; implementing K.S.A. 58-2011; effective June 4, 1999.)

118-4-3. Reference reports. (a) The land surveyor shall file reference reports on forms provided or approved by the Kansas state historical society. The land surveyor shall file a separate reference report for each township affected. Each reference report shall include the following information:

(1) The name, license number, seal, signature, and business address of the surveyor responsible for the survey;

(2) the telephone number of the surveyor;

(3) the name or job number reference of the survey;

(4) the date of the survey;

(5) the county, township, range, and section where the corner is located;

(6) the approximate location of the corner within the section, by standard identification;

(7) if known, the datum and the north and east coordinates of the marker; and

(8) descriptions of and measurements to witness corners.

(b) If an original marker is being restored or reestablished, the following information shall be provided:

(1) A description of the corner evidence found or a concise statement of the method used to reestablish the corner; and

(2) a brief sketch and description of the monument and accessories used to perpetuate the location of the corner. The land surveyor shall attach this information to the reference report. (Authorized by K.S.A. 58-2009; implementing K.S.A. 58-2011; effective June 4, 1999.)

118-4-4. Fees. (a) The fee for filing each reference report with the Kansas state historical society, pursuant to K.A.R. 118-4-1 or 118-4-2, shall be \$4.00 for each corner to which reference is made.

(b)(1) The fees for information requests, pursuant to K.S.A. 58-2011 and amendments thereto, shall be as follows:

(A) Requests for copies of reference reports only:

(i) Reports from one, two, or three sections: \$10.00; and

(ii) reports from each additional section: \$5.00;

(B) requests for copies of any combination of field notes, plats, and maps: \$15.00 for each section;

(C) copying fee: \$1.00 for each page in addition to the fees specified in paragraphs (b)(1)(A) and (B);

(D) fax fee: \$1.00 for each page faxed, in addition to the fees specified in paragraphs (b)(1)(A) and (B); and

(E) requests for any copy to be certified: \$2.00 for each copy.

(2) The fees listed in paragraphs (b)(1)(A) and (B) shall be charged whether or not information is found or copies are made. (Authorized by and implementing K.S.A. 58-2009 and K.S.A. 58-

2011; effective June 4, 1999; amended Jan. 26, 2007.)

Article 5.—STATE REHABILITATION TAX CREDIT PROGRAM

118-5-1. Definitions. For the purposes of this article, these terms shall have the following meanings. (a) “Certification” means the process whereby the reviewing entity determines that a historic structure is a qualified historic structure or that a rehabilitation plan is a qualified rehabilitation plan, or both.

(b) “Qualified expenditures” means any of the following:

(1) For rehabilitation of income-producing properties that qualify for the federal rehabilitation tax credit program, the costs and expenses incurred by a qualified taxpayer, as defined in L. 2001, ch. 108, sec. 1 and amendments thereto, in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan, which are defined as qualified rehabilitation expenditures by section 47 (c) (2) of the federal internal revenue code as in effect July 1, 2001, and hereby adopted by reference;

(2) for rehabilitation of income-producing properties that do not qualify for the federal rehabilitation tax credit program, the costs and expenses incurred by a qualified taxpayer in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan. These expenses shall be deemed to have been incurred when the project is certified by the reviewing entity as a completed qualified rehabilitation; or

(3) for non-income-producing properties, the costs and expenses incurred by a qualified taxpayer in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan. These expenses shall be deemed to have been incurred when the project is certified by the reviewing entity as a completed qualified rehabilitation.

(c) “Reviewing entity” means the state historic preservation officer or the local government official who signs an agreement with the state historic preservation office to carry out review procedures. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002).

118-5-2. Authorizing a local government as a reviewing entity. An agreement au-

thorizing a city or county to make recommendations and to carry out review procedures under the state rehabilitation tax credit program may be entered into by the state historic preservation officer if the state historic preservation officer determines that the city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission, and is actively engaged in a local historic preservation program. The agreement shall specify the authority delegated to the city or county by the state historic preservation officer, the requirements for those performing the responsibilities, and the manner in which the city or county will report its decisions to the state historic preservation officer. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-3. Certifications. (a) Before a rehabilitation plan may be certified by the reviewing entity as a qualified rehabilitation plan, the structure shall be certified as a qualified historic structure. Except as otherwise specified in these regulations, part 1 of the rehabilitation certification application shall be used by the reviewing entity to determine whether a structure can be certified as a qualified historic structure.

(b) A qualified rehabilitation plan shall mean a plan that complies with the secretary of the interior's standards for rehabilitation, 36 C. F. R. Part 67, as in effect July 1, 2001, which is hereby adopted by reference except for 36 C.F.R. 67.7 (b) (8). Except as otherwise specified in these regulations, part 2 of the rehabilitation certification application shall be used by the reviewing entity to determine whether the plan for a proposed project involving a qualified historic structure constitutes a qualified rehabilitation plan. Part 3 of the rehabilitation certification application shall be used by the reviewing entity to determine whether the applicant completed the rehabilitation as presented in part 2 of the application, which shall have been previously approved. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-4. Application. (a) Applicant criteria. Each applicant seeking the state rehabilitation tax credit shall be either the owner or long-term lessee of the property in question. Lessee expenditures shall qualify if the term of the lease is more than the recovery period of the building for de-

preciation as set forth in IRS regulation 26 C. F. R. 1.48-12(c)(7)(v), as in effect July 1, 2001, and hereby adopted by reference.

(b) Application procedure.

(1) Each application shall be made on forms available from the reviewing entity according to instructions accompanying the application.

(2) Each request for certification shall be sent to the reviewing entity.

(3) Only complete applications shall be reviewed by the reviewing entity.

(4) The review of each submission of a rehabilitation certification application shall be concluded within 30 calendar days of receipt of each complete, adequately documented application. If adequate documentation is not provided, the applicant shall be notified of the additional information needed to undertake or complete the review.

(c) Application, part 1.

(1) Except as specified in K.A.R. 118-5-5(b), to submit a request for certification of a structure as a qualified historic structure, each applicant shall complete part 1 of the rehabilitation certification application provided by the reviewing entity, according to the instructions accompanying the application. The applicant shall submit the application to the reviewing entity.

(2) Part 1 of the rehabilitation certification application may be submitted before submitting part 2 or at the same time as submitting part 2 of the application. However, certification of the qualified historic structure shall be required before certification of the qualified rehabilitation plan.

(d) Application, part 2.

(1) Except as specified in K.A.R. 118-5-7(a)(2), to submit a request for certification of a qualified rehabilitation plan, each applicant shall complete part 2 of the rehabilitation certification application, on a form provided by the reviewing entity and according to the instructions accompanying the application. The applicant shall submit the application to the reviewing entity.

(2) Part 2 of the rehabilitation certification application may be submitted when the applicant submits part 1 of the application. However, certification of the qualified historic structure shall be required before certification of the qualified rehabilitation plan.

(3) Before part 2 is reviewed, the applicant shall submit a fee to the reviewing entity, as specified in K.A.R. 118-5-10.

(4) Each applicant seeking the state tax credit

but not the federal rehabilitation tax credit shall submit part 2 of the application and receive the approval of the reviewing entity or state historic preservation office before commencing work.

(5) Each applicant seeking both the federal and state credit shall comply with the requirements set forth in IRS regulations 26 C.F.R. 1.48-12, as in effect July 1, 2001, and hereby adopted by reference.

(e) Application procedure, part 3.

(1) Each applicant shall complete part 3 of the rehabilitation certification application.

(2) The tax credit shall not be claimed until the project has been certified as having been completed according to the qualified rehabilitation plan certified by the reviewing entity. To request final certification of a qualified rehabilitation plan, the applicant shall complete part 3 of the rehabilitation certification application, on a form provided by the reviewing entity and according to the instructions accompanying the application, and submit it to the reviewing entity.

(3) Part 3 shall not be submitted for review until the rehabilitation project detailed in part 2 is completed. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-5. Standards for certifying a qualified historic structure. The following standards for certifying a qualified historic structure shall be applied by the reviewing entity.

(a) Structures, both income-producing and non-income-producing, for which the federal rehabilitation tax credit is not sought but for which only the state tax credit is sought shall be listed on the national register of historic places or the register of Kansas historic places, or shall be certified as located in and contributing to a district listed on the national register of historic places or the register of Kansas historic places before commencing the project.

(b) Structures that are individually listed on the national register of historic places or the register of Kansas historic places shall be deemed already certified as qualified historic structures. An applicant whose structure is already listed on the register of Kansas historic places or national register of historic places shall not be required to complete part 1 of the application.

(c) An applicant who is also applying for the federal rehabilitation tax credit program shall not be required to complete part 1 of the application

process for the state rehabilitation tax credit program.

(d) Structures located within districts listed on the register of Kansas historic places or the national register of historic places, both income-producing and non-income-producing, for which the federal rehabilitation tax credit is not sought but for which only state tax credit is sought shall be certified as qualified historic structures within historic districts as specified in K.A.R. 118-5-6. Each applicant for a project involving one of these structures shall be required to complete part 1 of the application for the state rehabilitation tax credit program. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-6. Standards for certifying a qualified historic structure within a historic district. Each structure for which certification is sought that is located within a district listed on the register of historic Kansas places or national register of historic places shall be reviewed by the reviewing entity to determine if the structure contributes to the historic significance of the district by applying the following standards for evaluating significance within a registered historic district:

(a) A structure contributing to the historic significance of a district shall be defined as one that by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place, and historical development.

(b) A structure not contributing to the historic significance of a district shall be defined as either of the following:

(1) One that does not add to the district's sense of time and place, and historical development; or

(2) one in which the location, design, setting, materials, workmanship, feeling, and association have been so altered or are so deteriorated that the overall integrity of the building has been irretrievably lost.

(c) A structure that has been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning the structure's historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(d) If a rehabilitation tax credit is sought, a certification of significance shall be made based on

the appearance and condition of the property before the rehabilitation was begun.

(e) If a nonhistoric surface material obscures a facade, the applicant may be required to remove a portion of the surface material before requesting certification so that a determination of historic significance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the historic district, the structure shall be determined to be a qualified historic structure. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-7. Requirements for certifying a qualified rehabilitation plan. (a) (1) For projects on structures, both income-producing and non-income-producing, for which the federal rehabilitation tax credit is not sought but for which only the state tax credit is sought, a qualified rehabilitation plan shall be certified before the applicant commences work on the structure. The applicant shall submit part 2 of the application for the state rehabilitation tax credit.

(2) An applicant who submits part 2 of the federal historic preservation certification application shall not be required to submit part 2 of the application for the state rehabilitation tax credit program.

(b) The following requirements shall be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

(1) The structure shall be used for its historic purpose or shall be placed in a new use that requires minimal change to the defining characteristics of the structure and its site and environment.

(2) The historic character of the structure shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize the structure shall be avoided.

(3) Each structure shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historic development, including adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(4) Most structures change over time; however, those changes that have acquired historic significance in their own right shall be retained and preserved.

(5) Distinctive features, finishes, and construc-

tion techniques or examples of craftsmanship that characterize the historic structure shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(7) Chemical or physical treatments, including sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize a structure. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the structure and its environment.

(9) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic structure and its environment would be unimpaired.

(c) All elements of the rehabilitation project shall meet the secretary of the interior's nine standards for rehabilitation adopted by reference in K.A.R. 118-5-3 (b); portions of the rehabilitation project not in conformance with the standards shall not be exempted. An owner undertaking a rehabilitation project shall not be held responsible for prior rehabilitation work that is not part of the current project, or for rehabilitation work that was undertaken by previous owners or third parties.

(d) Conformance to the standards shall be determined on the basis of the application documentation and other available information by evaluating the structure as it existed before the commencement of the rehabilitation project, regardless of when the structure becomes a certified historic structure.

(e) If necessary documentation is not provided, review and evaluation shall not be completed, and a denial of certification shall be issued on the basis of lack of information. Because the circumstances of each rehabilitation project are unique to the particular historic structure, certifications that have been granted to other rehabilitation projects

shall not be deemed relevant and shall not be relied on by applicants as relevant to other projects.

(f) A project shall not be certified as a qualified rehabilitation until the project is completed and so designated by the reviewing entity. A determination that the completed rehabilitation of a structure not yet designated a qualified historic structure meets the secretary's standards for rehabilitation shall not constitute a certification of rehabilitation.

(g) A rehabilitation project for certification purposes shall encompass all work on the interior and exterior of the qualified historic structure or structures and the site and environment, as well as related demolition, new construction, or rehabilitation work that may affect the historic qualities, integrity of the site, landscape features, and environment of the certified historic structure or structures.

(h) For rehabilitation projects involving more than one certified historic structure in which the structures are judged by the reviewing entity to have been functionally related historically to serve an overall purpose, including a mill complex or a residence and carriage house, rehabilitation certification shall be determined based on the merits of the overall project rather than for each structure or individual component. For rehabilitation projects in which there is no historic functional relationship between or among the structures, the certification decision shall be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes.

(i) Demolition of a structure as part of a rehabilitation project involving multiple structures may result in denial of certification of the rehabilitation plan. In projects in which there is no historic functional relationship between or among the structures being rehabilitated, related new construction that physically expands one certified historic structure undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure shall result in denial of certification of the rehabilitation plan unless a determination has been made that the building to be demolished is not a certified historic structure. In rehabilitation projects in which the structures have been determined to be functionally related historically, demolition of a component may be approved if one of the following conditions is met:

(1) The component is outside the period of significance of the structure or district.

(2) The component is so deteriorated or altered that its integrity has been irretrievably lost.

(3) The component is a secondary one that is deemed to lack historic, engineering, or architectural significance or does not occupy a major portion of the site, and persuasive evidence is present to show that retention of the component is not technically or economically feasible.

(j) In situations involving rehabilitation of a certified historic structure in a historic district, the rehabilitation project shall be reviewed by the reviewing entity first as it affects the certified historic structure and second as it affects the district. A certification decision shall be made by the reviewing entity accordingly.

(k) Upon the reviewing entity's receipt of the complete application describing the rehabilitation project, a determination of whether the project is consistent with the standards for rehabilitation shall be made by the reviewing entity. If the project does not meet the standards for rehabilitation, the applicant shall be advised of that fact in writing and, if possible, shall be advised of necessary revisions to meet these standards.

(l) Once a proposed or ongoing project has been approved, the applicant shall promptly submit to the reviewing entity, in writing, any substantive changes to the rehabilitation plan that the applicant proposes to make. The applicant shall be notified by the reviewing entity, in writing, of whether the proposed changes to the rehabilitation plan may be certified.

(m) If a proposed, ongoing, or completed rehabilitation does not meet the standards for rehabilitation, an explanatory letter shall be sent to the applicant.

(n) Each applicant shall submit part 3 of the rehabilitation certification application for the state rehabilitation tax credit program as specified in K.A.R. 118-5-4. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-8. Rehabilitation project phases.

(a) There shall be no phased projects under the state rehabilitation tax credit program. For purposes of the state rehabilitation tax credit program, each phase of a phased federal rehabilitation tax credit project shall be considered a separate project.

(b) A separate rehabilitation certification application shall be required for each phase of a project that is certified through the federal reha-

bilitation tax credit program as a phased project. The qualified rehabilitation expenditures for each phase shall equal or exceed \$5,000. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-9. Review. (a) (1) The owner, or duly authorized representative as appropriate, may appeal any denial of certification made according to this article. Each appeal shall be submitted in writing and received by the division director of the cultural resources division of the Kansas state historical society, within 30 days of the owner's receipt of the decision that is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal, but all information that the appellant wishes the division director to consider shall be submitted in writing.

(2) The record of the decision in question, any further written submissions by the appellant, and other available information shall be considered by the division director. The appellant shall be provided with a written decision as promptly as circumstances permit.

(b) In considering each appeal, alleged errors in professional judgment or alleged prejudicial procedural errors by cultural resources division officials may be taken into account by the division director. The division director's decision shall consist of either of the following:

- (1) A reversal of the appealed decision; or
- (2) an affirmation of the appealed decision.

The division director's decision may be based in whole or part on matters or factors not discussed in the decision appealed. Authorization to issue the certifications specified in this article shall rest with the division director if the division director determines that the requested certification

meets the applicable statutory standards set forth in this article. (Authorized by and implementing L. 2001, ch. 108, sec. 1; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002.)

118-5-10. Fees. (a) The fees specified in subsection (b) shall be charged for reviewing rehabilitation certification applications.

(b) Payment shall not be made until requested by the reviewing entity. A certification decision shall not be issued on an application until the appropriate remittance is received. Each fee shall be nonrefundable.

Amount of qualified expenditures	Fee amount
\$5,000 - \$25,000	\$200
\$25,001 - \$50,000	\$350
\$50,001 - \$100,000	\$500
\$100,001 - \$500,000	\$900
\$500,001 - \$1,000,000	\$1,500
over \$1,000,000	\$2,000

(c) Each sale, assignment, conveyance, and transfer of tax credits pursuant to K.S.A. 79-32,211(c) and amendments thereto shall be subject to the fees specified in this subsection, in addition to the fees specified in subsection (b). A separate, nonrefundable fee shall be charged for each new taxpayer acquiring any tax credits under this subsection.

Amount of qualified expenditures	Fee amount
\$5,000 - \$50,000	\$0
over \$50,000	\$300

(d) Each rehabilitation of a separate qualified historic structure shall be considered a separate project for purposes of computing the fee. (Authorized by and implementing K.S.A. 2004 Supp. 79-32,211; effective, T-118-9-5-01, Sept. 5, 2001; effective Aug. 2, 2002; amended Nov. 4, 2005.)